



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,043	03/20/2000	IAN BAIRD-SMITH	350013-65	9395

7590 07/05/2002

OPPENHEIMER WOLFF & DONNELLY
2029 CENTURY PARK EAST
38TH FLOOR
LOS ANGELES, CA 90067

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/445,043

Applicant(s)

BAIRD-SMITH ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6 and 8-22 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,8-18 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Prosecution Application

1. The request filed on April 15, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/445,043 is acceptable and a CPA has been established. An action on the CPA follows.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a "pre-stressed" membrane.

Claim Objections

4. Claims 1,3,4,6,8-18 and 21 are objected to because of the following informalities: omitted commas after phrases such as "in use of the closure". Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1,3,4,6,8-18 and 22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the

Art Unit: 3727

disclosure, as originally filed, for a "pre-stressed" membrane. It is not explicitly set forth in the specification that the membrane is pre-stressed. The specification teaches explicitly that the seal membrane expands toward the disc of the cap 12 (page 11, first paragraph). Any flexible membrane of the same material will function in the same manner.

This is a **new matter** rejection.

7. Claims 1,3,4,6,8-18 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

How is the membrane pre-stressed? Is it intended that a flexible membrane is not pre-stressed to any degree?

The structure of the closure is unclear in claims 1 and 12. The seal is not a structural element of the closure, but rather a by-product of the relationship formed between the closure and the container when the closure is applied to the container neck.

In claim 4, it is unclear if the phrase "including a neck" is referring to the closure or to the container.

Claim 4 was amended in Paper No. 6 (filed March 20, 2000) to depend from claim 1 only. Yet, in Paper No. 9 (filed August 8, 2001) the dependency is set forth as "according to any preceding claim" without such amendment being set forth. Applicant is required to clarify the dependency of claim 4 in response to this Office action.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1,3,4,6,8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi (JP Application 06219464) in view of Brophy (US 5,664,621).

Hiroshi teaches a can having a flexible member 3 secured to the can end, a rigid cap 5 having a laminar member and a skirt 7 extending downwardly from a peripheral edge thereof, and a deformable ring member 6 secured to the rigid cap (see fig. 8).

Hiroshi is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Additionally, Hiroshi does not teach the membrane is pre-stressed.

Brophy teaches a pre-stressed membrane closure for resisting deformation due to pressure created in the associated container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a pre-stressed membrane to the closure of Hiroshi as taught by Brophy. Doing so would allow for maintaining the seal membrane on the container in a non-ruptured state to a predetermined pressure level.

Regarding claim 4, the outer portion 2 of the can comprising the screw threads has an upper edge that is considered to be a flange.

Art Unit: 3727

Regarding claim 9, Hiroshi teaches the claimed invention except for the flexible membrane being made of a metal foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flexible membrane of metal foil, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hardt (US 4,328,905).

Hiroshi as modified teaches the claimed closure except for a pull tab hingedly attached to the membrane.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the modified membrane of Hiroshi. Doing so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

11. Claims 1,3,5,6,9,12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen et al (US 3,833,142) in view of Brophy.

Owen is silent regarding the membrane being pre-stressed and the spacing between the laminar member and the flexible membrane.

Brophy teaches a pre-stressed membrane closure for resisting deformation due to pressure created in the associated container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a pre-stressed membrane to the closure of Owen as taught by

Art Unit: 3727

Brophy. Doing so would allow for maintaining the seal membrane on the container in a non-ruptured state to a predetermined pressure level.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

12. Claims 1,3,4,6,9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shull (US 4,531,649) in view of Brophy.

Shull is silent regarding the membrane being pre-stressed and the spacing between the laminar member and the flexible membrane.

Brophy teaches a pre-stressed membrane closure for resisting deformation due to pressure created in the associated container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a pre-stressed membrane to the closure of Shull as taught by Brophy. Doing so would allow for maintaining the seal membrane on the container in a non-ruptured state to a predetermined pressure level.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Regarding claim 11, the unsecured end of the membrane functions as a pull tab and is hingedly attached to the membrane radially beyond the end of the container neck.

Art Unit: 3727

13. Claims 1,3,5,6,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revill (GB 2,132,392) in view of Brophy.

Revill is silent regarding the membrane being pre-stressed and the spacing between the laminar member and the flexible membrane.

Brophy teaches a pre-stressed membrane closure for resisting deformation due to pressure created in the associated container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a pre-stressed membrane to the closure of Revill as taught by Brophy. Doing so would allow for maintaining the seal membrane on the container in a non-ruptured state to a predetermined pressure level.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

14. Claims 1,3,4,6,8-18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aulbach (US 1,630,687) in view of Hiroshi and Brophy.

Aulbach teaches a container having a screw-threaded closure for one open end and a flanged plate for the opposite one end. Aulbach does not teach a pre-stressed membrane nor any spacing between the membrane and the screw-threaded closure.

Hiroshi teaches a can having a flexible member 3 secured to the can end, a rigid, screw-threaded cap 5 having a laminar member and a skirt 7 extending downwardly from a peripheral edge thereof, and a deformable ring member 6 secured to the rigid cap (see fig. 8).

Art Unit: 3727

Brophy teaches a pre-stressed membrane closure for resisting deformation due to pressure created in the associated container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a heat-sealed or adhesively applied membrane for the seal member of Aulbach. Doing so makes use of a sealed container easier by rendering an opening tool unnecessary.

Regarding the spacing between the laminar member and the flexible membrane, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Response to Arguments

15. Applicant's arguments with respect to claims 1,3,4,6,8-18 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various containers and methods of making containers are cited for their disclosures.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

Art Unit: 3727

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH

June 28, 2002


Robin A. Hylton
Patent Examiner
GAU 3727